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Paper No.8

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**COPY MAILED**

**AUG 19 2002**

In re Application of  
Peter Hoch  
Application No. 09/911,437  
Deposited: July 24, 2001  
Attorney Docket No.:RCA  
87,911/4417690

ON PETITION

**OFFICE OF PETITIONS**

This is a decision on the petition filed January 16, 2002 (certificate of mailing date December 7, 2001), requesting in effect, that a Notice of Incomplete Nonprovisional Application ("Notice") mailed September 7, 2001 be withdrawn. This petition will first be treated under 37 CFR 1.53 as a petition for a filing date and subsequently as a petition under 37 CFR 1.182.

The petition under 37 CFR 1.53 is dismissed.  
The petition under 37 CFR 1.182 is granted.

The application was deposited on July 24, 2001. However, on September 7, 2001, the Office of Initial Patent Examination mailed the Notice requiring a declaration, the specification and at least one claim in the specification. The Notice further stated the filing date would be the date of the receipt of the specification and at least one claim.

In response, the present petition was filed. The petition contends a filing date for the above-identified application was incorrectly denied because a previously decided petition under 37 CFR 1.137(b) revived the parent application giving this application continuity with the parent application and as a consequence the filing date of the parent application.

Petitioner's argument has been considered but it is not persuasive. A review of the Official file confirms the specification and at least one claim were not amongst the items submitted on July 24, 2001.

Petitioner's interpretation of the decision on the petition to revive under 37 CFR 1.137(b) mailed on August 27, 2001 is incorrect. The decision does not indicate a filing date for the continuing application has been granted. The decision established continuity between the applications. "The term continuity is used to express the relationship of copendency of the same subject matter in two different applications of the same inventor." Establishing continuity is only one of the requirements in claiming benefit of an earlier filing date.

Pursuant to 35 U.S.C. 111(a)(2)(4) the filing date of an application shall be the date on which the specification and any required drawings are received in the Patent and Trademark Office.

Petitioner failed to submit the specification with at least one claim and as such petitioner was not entitled to a filing date. Establishing continuity does not overcome the requirements of what constitutes a complete application.

Thus, the petition to accord a filing date must be dismissed.

This petition was not necessitated by USPTO error so the petition fee will not be refunded.

Petition under 37 CFR 1.182

A review of the application transmittal form indicates petitioner intended to incorporate by reference prior application 08/443,518. Under circumstances where there has been an incorporation by reference, an inadvertent omission of application parts and no filing date has been granted petitioner is required to file a petition under 37 CFR 1.182. See MPEP 201.06.

A petition under 37 CFR 1.182 requires:


- (1) required petition fee;
- (2) an amendment submitting the omitted material, requesting that the necessary omitted material contained in the prior application and submitted in the amendment be included in the continuation or divisional application based on incorporation by reference statement.

Pursuant to petitioner's request a \$130.00 petition fee has been charged to deposit account 07-0832.

The petition under 1.182 is granted.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of July 24, 2001 using the application papers filed on July 24, 2001 and a copy of the specification, drawings and claims filed on January 16, 2002.

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

  
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